

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**SALLYPORT COMMERCIAL
FINANCE, LLC, a Delaware limited
liability company,**

Plaintiff,

V.

RETROLOCK CORPORATION, a California corporation; TANIA TOMYN, an individual; AARON SMITH, an individual; and AT INSTALLATION, INC., a California corporation,

Defendants.

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CIVIL ACTION No.: 4:22-cv-02872

## DEFENDANTS' ORIGINAL ANSWER

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, Defendants, RETROLOCK CORPORATION, TANIA TOMYN, AARON SMITH, AND AT INSTALLATION, INC. (“*Defendants*”), and make and file this Original Answer to Plaintiff, SALLYPORT COMMERCIAL FINANCE, LLC (“*Plaintiff*”), Original Complaint, and would respectfully show the Court as follows:

## I. GENERAL DENIAL

1. Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Defendants generally deny each and every allegation contained within the Original Complaint, and hereby demand strict proof thereof.

## II. AFFIRMATIVE DEFENSES

2. Plaintiff's claims, and each of them, are barred due to duress.

3. Each and every one of Plaintiff's alleged rights, claims, and obligations which it seeks to enforce against Defendants are, by Plaintiff's conduct, agreement, or otherwise, barred by doctrine of estoppel.

4. Plaintiff acted in such a way as to cause these Defendants to believe that Plaintiff would not file suit, and Defendants relied on those actions or representations.

5. Service of process was insufficient.

6. Venue is improper.

7. Plaintiff has failed to mitigate its damages, if any.

8. Plaintiff's cause of action is barred by the doctrine of unclean hands and Plaintiff's failure to do equity.

9. The amount of attorney fees claimed is not reasonable.

10. The services underlying the attorney fees did not advance the interest of Plaintiff.

11. Plaintiff has rejected reasonable settlement offers and is barred from recovering attorney fees and must pay answering Defendants' attorney fees.

12. The claims, and each of them, for breach of contract are barred by the failure to satisfy conditions subsequent.

13. Plaintiff's Claim is barred by the doctrine of in pari delicto.

14. Plaintiff breached its fiduciary duties to answering Defendants.

15. Plaintiff violated its duty of loyalty to answering Defendants.

16. Plaintiff acquiesced to the acts and omissions complained of.

17. These answering Defendants have acted in good faith.

18. These answering Defendants have a right to exclusive ownership of the Property.

19. These answering Defendants have a right to equity from the Property.

20. These answering Defendants have committed no acts of dominion over Plaintiff's property/chattels.

21. The facts not having been fully developed, Defendants further affirmatively plead the following affirmative defenses as may be applicable in this action: accord and satisfaction; arbitration and award; assumption of risk; contributory negligence; discharge in bankruptcy; duress; estoppel; failure of consideration; fraud; illegality; injury by fellow servant; laches; license; payment; release; res judicata; statute of frauds; statute of limitations; waiver; and any other matter constituting an avoidance or affirmative defense.

### **III. ATTORNEY'S FEES**

22. Defendants hereby request judgment against Plaintiff for reasonable and necessary attorney's fees under the provisions of Chapter 38 CIVIL PRACTICE AND REMEDIES CODE, as well as in equity and by statute.

### **IV. REQUEST FOR DISCLOSURE**

23. As provided in Rule 194, TEXAS RULES OF CIVIL PROCEDURE, Defendants request disclosure of all items listed in Rule 194.2, TEXAS RULES OF CIVIL PROCEDURE within 30 days of the service of this request.

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**V. PRAYER**

WHEREFORE, Defendants, RETROLOCK CORPORATION, TANIA TOMYN, AARON SMITH, AND AT INSTALLATION, INC., pray the Court enter judgment in favor of Defendants on all matters stated above, including an award to Defendants for costs of court and reasonable attorney's fees, and awarding Defendants such other and further relief to which the Court determines Defendants are entitled.

Respectfully submitted,

**VC2 LAW**

A handwritten signature in blue ink, appearing to read "Michael", is written over a horizontal line.

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**ATTORNEY FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the foregoing document was served via electronic filing, facsimile, and/or email on this 24 day of October 2022 on the following counsel of record:

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An Employee of VC2 Law